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## Harvesting and Utilizing Explanatory Parentheticals

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HARVESTING AND UTILIZING EXPLANATORY PARENTHETICALS

Pablo D. Arredondo\*

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I. INTRODUCTION

Explanatory parentheticals (parentheticals)—the concise summaries neatly packaged alongside case citations—are ubiquitous, easily harvested, and grossly underutilized. This Paper describes what is believed to be the first instance of harvesting explanatory parentheticals and utilizing them on a mass scale. Specifically, this Paper describes how hundreds of thousands of parentheticals were identified, mined from case law, and then integrated into

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\* Co-founder and Chief Legal Research Officer at Casetext; Fellow, Stanford Center for Legal Informatics. This Paper is dedicated to the late J. Paul Lomio, whose expertise in legal research was matched only by his generosity with guidance and encouragement. Michael Lissner and Brian Carver offered pointers even as they suffered through my early agitation about this topic. Susan Nevelow Mart and Jody Armstrong provided helpful review and guidance, as did the participants at the Seventh Annual Boulder Conference on Legal Information, Philadelphia 2015. Finally, I would like to thank Jake Heller for his vision and tireless efforts towards making the law free and understandable for all.

Casetext, a free legal research platform. The value that parentheticals add to research is explored, including enhancing the value of a citatory.

## II. EXPLANATORY PARENTHETICALS ENCLOSE USEFUL CASE SUMMARIES

Commercial legal research platforms such as Westlaw and LexisNexis employ an army of editors to write concise summaries of judicial decisions.<sup>1</sup> These summaries are then displayed above the opinion, enabling researchers to quickly get the “gist” of the case before delving into the full text.<sup>2</sup> Parentheticals are another form of concise case summaries, generated not by editors but by judges.<sup>3</sup> Parentheticals are designed to quickly convey important aspects (most often, the “holding”) of judicial decisions.

Neither the substance nor the format of explanatory parentheticals is arbitrary. *The Bluebook: A Uniform System of Citation (Bluebook)* exhorts their use,<sup>4</sup> stating that, “[r]egardless of the type of authority you are citing, it is often helpful to include additional information to explain the relevance of the cited authority.”<sup>5</sup> And in briefs, Justice Ruth Bader Ginsburg notes that the “first rate brief” will “furnish[] parenthetical explanations to show the relevance of the citation.”<sup>6</sup> As to format, the *Bluebook* further instructs that this explanatory information be “append[ed] . . . parenthetically at the end of

1. See Marcus Anderson, *High Profile Cases on Westlaw*, THOMSON REUTERS: LEGAL SOLUTIONS (Sept. 11, 2009), <http://blog.legalsolutions.thomsonreuters.com/top-legal-news/high-profile-cases-on-westlaw/> (stating that West “has approximately 90 attorney-editors”); Sean Fitzpatrick, Managing Director of North American Research Solutions, LexisNexis, Address at RELX Group Investor Presentation (Nov. 10, 2016) (transcript available at <https://www.relx.com/~media/Files/R/RELX-Group/documents/presentations/legal-teach-in-10nov16-transcript.pdf>) (stating that Lexis has “over 1,000 attorney authors from practitioners to professionals producing original content for [its] product and in addition to that [has] hundreds of attorney editors who review and update this content”).

2. See, e.g., *Law Research Guide: Finding Cases with WestlawNext & LexisNexis Academic*, U.C. SAN DIEGO (Jan. 23, 2018, 2:23 PM), <https://ucsd.libguides.com/c.php?g=90738&p=971873> (noting that “the case screen will start out with a summary of the case”).

3. Explanatory parentheticals are also ubiquitous in other legal texts such as law review articles and briefs. Although the techniques described are applicable to these types of documents, this Paper is limited in scope to analysis of parentheticals extracted from judicial opinions.

4. Ruth Bader Ginsburg, *Remarks on Appellate Advocacy*, 50 S.C. L. REV. 567, 568 (1999); see also Eric P. Voigt, *Explanatory Parentheticals Can Pack a Persuasive Punch*, 45 MCGEORGE L. REV. 269, 270–71 (2013) (“Today’s best litigators and legal writers use parentheticals to persuade.”).

5. THE BLUEBOOK: A UNIFORM SYSTEM OF CITATION B. 1.3, at 5–6 (Columbia Law Review Ass’n et al. eds., 20th ed. 2015) [hereinafter BLUEBOOK].

6. Ginsburg, *supra* note 4, at 568.

[the] citation.”<sup>7</sup> Critically, the *Bluebook* also dictates that “[e]xplanatory information takes the form of a present participial phrase, a quoted sentence, or a short statement that is appropriate in context.”<sup>8</sup>

Although the underlying techniques can be applied to all parentheticals, the efforts discussed below are limited to parentheticals that contain phrases beginning with a present participle. The *Bluebook* provides an example of this type of parenthetical:

*But see* Flanagan v. United States, 465 U.S. 259, 264 (1989) (explaining that the final judgment rule reduces the potential for parties to “clog the courts” with a succession of time-consuming appeals).<sup>9</sup>

To further convey the format and nature of parentheticals, consider three more examples, all of which were extracted directly from the text of judicial opinions:

*Lewis v. Casey*, 518 U.S. 343, 116 S.Ct. 2174, 135 L.Ed.2d 606 (1996) (holding that inmates claiming denial of access to courts failed to show actual injuries stemming from inadequate library facilities).<sup>10</sup>

*New York Times Co. v. Sullivan*, 376 U.S. 254, 265–66 (1964) (concluding that an advertisement soliciting funds for political and social ends was entitled to more protection than mere commercial speech).<sup>11</sup>

*Horton v. California*, 496 U.S. 128 (1990) (finding no legitimate expectation of privacy in common hallway).<sup>12</sup>

As illustrated by these examples, the vast majority of parentheticals are concise<sup>13</sup> and self-contained. There is much to love about them.

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7. BLUEBOOK, *supra* note 5, at 5–6.

8. *Id.* R. 1.5(a), at 64.

9. *Id.*

10. Austin v. Hopper, 15 F. Supp. 2d 1210, 1257 n.215 (M.D. Ala. 1998).

11. Adventure Commc’ns v. Ky. Registry of Election Fin., 191 F.3d 429, 440–41 n.14 (4th Cir. 1999).

12. Tancredi v. Malfitano, 567 F. Supp. 2d 506, 511 (S.D.N.Y. 2008).

13. The *Bluebook* guidelines explicitly facilitate concision, stating that to save space, “[y]ou may omit extraneous words such as ‘the’ unless doing so would cause confusion.” BLUEBOOK, *supra* note 5, at 5–6.

## III. HARVESTING EXPLANATORY PARENTHETICALS

The uniform format of explanatory parentheticals, dictated by the *Bluebook*, makes them amenable to automated harvesting using well-known data-mining tools. One such technique, regular expressions,<sup>14</sup> enables construction of search queries tailored to extract case citations that were followed by parentheticals beginning with present participles.<sup>15</sup>

Parenthetical-extracting queries were run on a corpus of federal and state judicial opinions from 2011 to 2014.<sup>16</sup> This relatively simple process extracted over 400,000 explanatory parentheticals.<sup>17</sup> It is a testament to the power of legal informatics that, with a few lines of simple code and a laptop, one can generate, in minutes, an exceedingly valuable database.

While anything resembling a thorough and rigorous analysis of the corpus of parentheticals is beyond the scope of this Paper, a few high-level characteristics will be discussed. As shown in the examples above, parentheticals can begin with a range of present participles. In the collection of parentheticals described above, 260 unique present participles appeared forty times or more. Table 1 shows the twenty most common present participles.

Table 1: Most Common Present Participles

Present Participle	Number of Occurrences	Present Participle	Number of Occurrences
<b>holding</b>	122,892	<b>recognizing</b>	12,737
<b>finding</b>	66,704	<b>dismissing</b>	10,896
<b>noting</b>	61,882	<b>denying</b>	9,685

14. Regular expressions are a formal computer language that enables the creation of intricate search queries. V. David Zvenyach has written a useful introduction to regular expressions, tailored specifically for attorneys. *See generally* V. David Zvenyach, *Chapter 1: Regular Expressions*, CODING FOR LAWYERS (2014), <http://codingforlawyers.com/chapters/ch1/>.

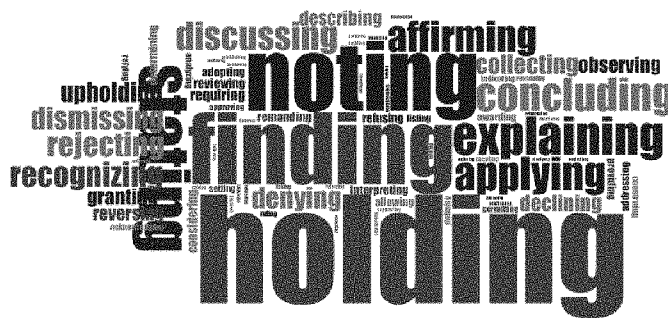
15. Parentheticals beginning with the word “citing” or “quoting” were deliberately ignored. Note that a substantial subset of explanatory parentheticals do not begin with present participles; these are no less useful but are ignored for purposes of this Paper.

16. *See infra* Table 1.

17. A precise determination of the number of case-summarizing parentheticals in the common law corpus is beyond the scope of this Paper, but note that this tally does not include parentheticals that followed “short” citations, as in “*Doe*, 555 U.S. at 123 (holding that . . . .)” Casetext currently integrates millions of parentheticals collectively summarizing over 675,000 judicial decisions.

<b>Present Participle</b>	<b>Number of Occurrences</b>	<b>Present Participle</b>	<b>Number of Occurrences</b>
<b>stating</b>	40,372	<b>collecting</b>	9,161
<b>explaining</b>	24,701	<b>upholding</b>	8,632
<b>applying</b>	19,494	<b>declining</b>	7,168
<b>concluding</b>	19,235	<b>granting</b>	6,632
<b>affirming</b>	18,545	<b>observing</b>	6,284
<b>discussing</b>	15,032	<b>describing</b>	5,883
<b>rejecting</b>	13,358	<b>reversing</b>	5,744

Given that a central part of a judicial decision is the holding, it is intuitive that the most common present participle is “holding.” Interestingly, the third most common present participle, “noting,” seems targeted at dicta.



**Figure 1. Word cloud illustrating distribution of present participles in parentheticals**

The number of decisions that have been summarized in explanatory parenthetical format is remarkable. Just the subset of parentheticals harvested by the author provided an analysis of roughly 90,000 unique published federal decisions,<sup>18</sup> including ~10,000 district court decisions, ~74,000 appellate court decisions, and ~6,000 Supreme Court decisions.

18. There were also tens of thousands of parentheticals concerning state law decisions; these will be ignored for purposes of this Paper.

Moreover, many judicial opinions have been summarized in explanatory parenthetical format multiple times. Over 1,000 decisions were summarized in at least ten parentheticals. Table 2 shows the ten decisions that were the subject of the most parentheticals:

**Table 2: Cases Most Frequently Summarized in Parenthetical Sample**

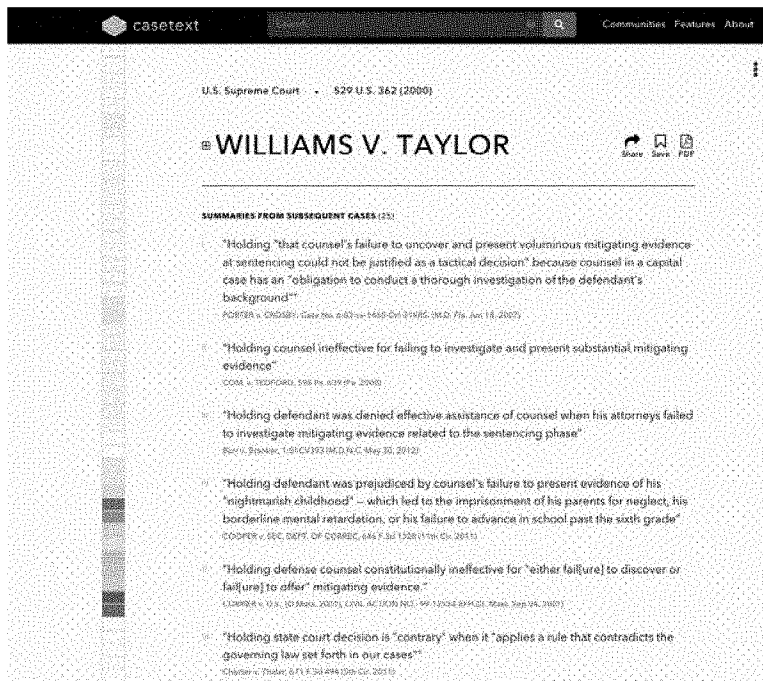
Decision	Number of Explanatory Parentheticals
<i>Bell Atlantic Corp. v. Twombly</i> , 550 U.S. 544 (2007)	91
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009)	80
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	66
<i>Farmer v. Brennan</i> , 511 U.S. 825 (1994)	61
<i>Bell v. Wolfish</i> , 441 U.S. 520 (1979)	57
<i>Woodford v. Ngo</i> , 548 U.S. 81 (2006)	55
<i>Will v. Michigan Dept. of State Police</i> , 491 U.S. 58 (1989)	54
<i>Monell v. Dept. of Social Services of City of New York</i> , 436 U.S. 658 (1978)	53
<i>Williams v. Taylor</i> , 529 U.S. 362 (2000)	53

In sum, the common law is teeming with concise case summaries, and leveraging the *Bluebook*-decreed consistency of the explanatory parenthetical format enables an immense set of these summaries to be harvested algorithmically. The next Part discusses some of the ways these summaries have or could be leveraged to enhance legal research technology.

## IV. LEVERAGING EXPLANATORY PARENTHETICALS

*A. Utilizing Parentheticals When Displaying Full-Text Primary Legal Documents*

One of the key enhancements offered by expensive research platforms is that primary legal documents are curated with editorial analysis. Parenthetical-extracted case summaries can be used to curate judicial opinions in exactly the way that Westlaw and LexisNexis curate opinions with editor-generated summaries. In August 2014, Casetext, a startup devoted to creating a free legal research platform, integrated over 200,000 parentheticals into its database. Another 50,000 or so parentheticals were integrated in March 2015. As of March 2016, over two million parentheticals have been integrated on Casetext. Figure 2 shows how the parentheticals, initially dubbed “ReCites” but now renamed “Summaries from Subsequent Cases,” appear above the full text of the primary legal document.



**Figure 2. Screenshot of *Williams v. Taylor* with Summaries from Subsequent Cases Expanded**



As noted earlier, most important decisions have been summarized in parenthetical format on many different occasions, by different courts, and in different contexts. Importantly, while some of these parentheticals are duplicative of each other, many focus on distinct aspects of a decision. This is illustrated in Figure 2, where the three parentheticals focus on three distinct aspects of the *Williams v. Taylor*<sup>19</sup> decision. Unlike the case summaries generated by Westlaw and LexisNexis editors, which attempt to create a general gist of a decision that is as broadly applicable as possible, parentheticals are tailored to the context of specific litigation. Parentheticals collectively are therefore able to convey specific aspects of a case that may be overlooked or omitted by those creating a one-size-fits-all summary.

As an example of how parentheticals can supplement private sector case summaries, consider how Westlaw and LexisNexis summarize the holdings in *Lewis v. Casey*.<sup>20</sup>

Westlaw summarizes the decision as having four holdings:

- (1) inmate claiming denial of access to courts cannot establish relevant actual injury simply by establishing that his prison's law library or legal assistance program is subpar in some theoretical sense;
- (2) finding that only two inmates, who were illiterate or non-English speakers, suffered actual injury as a result of inability to receive adequate legal assistance did not support system wide injunction mandating detailed, system wide changes in Arizona Department of Corrections' prison law libraries and its legal assistance program;
- (3) so long as delays in receiving legal materials or legal assistance to lockdown prisoners, who were most dangerous and violent prisoners in Arizona prison system, were product of prison regulations reasonably related to legitimate penological interests, delays of up to 16 days did not violate constitutional right of access to the courts, even if they resulted in actual injury; and
- (4) order mandating detailed, system wide changes in Arizona Department of Corrections' prison law libraries and legal assistance programs was improper as having been developed through a process

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19. 529 U.S. 362 (2000).

20. 518 U.S. 343 (1996).

that failed to give adequate consideration to views of state prison authorities.<sup>21</sup>

LexisNexis summarizes the *Lewis* decision as having two key findings:

(1) The Court found that actual injury was required to establish standing for a violation of constitutional rights, which meant a showing that the inmates were denied the tools required to attack their sentences, directly or collaterally, or to challenge conditions of their confinement...

(2) The Court also found that the district court failed to accord adequate deference to the judgment of the prison authorities with respect to restrictions on lockdown prisoners' access to law libraries, that the injunction was inordinately intrusive, and that the order was developed through a process that failed to give adequate consideration to the views of state prison authorities.<sup>22</sup>

Now consider twelve *Lewis* "holdings" extracted from explanatory parentheticals:

- "holding that a court may revisit standing on a motion for summary judgment, even though a plaintiff's claims previously survived a motion to dismiss on similar grounds"<sup>23</sup>
- "holding that inmates claiming denial of access to courts failed to show actual injuries stemming from inadequate library facilities"<sup>24</sup>
- "holding that inmate bringing a forward-looking claim must point to a 'non-frivolous legal claim [that was] being frustrated [or] impeded'"<sup>25</sup>

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21. *Synopsis*, *Lewis v. Casey*, 518 U.S. 343 (1996), WESTLAW, <http://www.next.westlaw.com> (last visited Mar. 23, 2018).

22. *Case Summary: Overview*, *Lewis v. Casey*, 518 U.S. 343 (1996), LEXIS ADVANCE, <http://www.advance.lexis.com> (last visited Mar. 23, 2018).

23. *Antenor v. D & S Farms*, 39 F. Supp. 2d 1372, 1376 (S.D. Fla. 1999) (citing *Lewis*, 518 U.S. at 358).

24. *Austin v. Hopper*, 15 F. Supp. 2d 1210, 1257 n.215 (M.D. Ala. 1998) (citing *Lewis*, 518 U.S. at 353).

25. *Broudy v. Mather*, 460 F.3d 106, 121 (D.C. Cir. 2006) (citing *Lewis*, 518 U.S. at 358).

- “holding that two instances of unlawful conduct were an inadequate basis for system-wide relief”<sup>26</sup>
- “holding that to state a denial-of-access claim, a prisoner-plaintiff must show ‘actual injury’ that is, the obstruction or frustration of a non-frivolous legal claim”<sup>27</sup>
- “holding that *Bounds* did not eliminate the requirement that an inmate allege actual injury that has resulted from a deprivation of adequate legal resources before he can gain standing to sue in federal court”<sup>28</sup>
- “holding the fact ‘[t]hat a suit may be a class action . . . adds nothing to the question of standing, for even named plaintiffs who represent a class must allege and show that they personally have been injured’”<sup>29</sup>
- “holding merely being subject to a governmental institution that was not organized or managed properly does not rise to a constitutional violation”<sup>30</sup>
- “holding that to state a claim for denial of the right to access the courts, a prisoner must demonstrate that ‘the alleged shortcomings in the library or legal assistance program hindered his efforts to pursue a legal claim’”<sup>31</sup>
- “holding the Constitution does not require the State to ‘enable the prisoner to discover grievances, and to litigate effectively once in court’”<sup>32</sup>
- “holding ‘[t]he requirement that an inmate alleging a violation of [the right of access to the courts] must show an actual injury derives ultimately from the doctrine of standing, a constitutional principle

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26. Disability Advocates, Inc. v. Paterson, 598 F. Supp. 2d 289, 310 (E.D.N.Y. 2009) (citing *Lewis*, 518 U.S. at 359).

27. Gearin v. City of Maplewood, 780 F. Supp. 2d 843, 865 (D. Minn. 2011) (citing *Lewis*, 518 U.S. at 349–53).

28. Harris v. Garner, 216 F.3d 970, 1001 (11th Cir. 2000) (citing *Lewis*, 518 U.S. at 343).

29. Hodgers-Durgin v. De La Vina, 165 F.3d 667, 672 (9th Cir. 1999) (quoting *Lewis*, 518 U.S. at 357).

30. McCray v. Williams, 357 F. Supp. 2d 774, 780 (D. Del. 2005) (quoting *Lewis*, 518 U.S. at 349–51).

31. Pabon v. Wright, 459 F.3d 241, 251 (2d Cir. 2006) (quoting *Lewis*, 518 U.S. at 351).

32. Silva v. Vittorio, 658 F.3d 1090, 1097 (9th Cir. 2011) (quoting *Lewis*, 518 U.S. at 354).

that prevents courts of law from undertaking tasks assigned to the political branches”<sup>33</sup>

- “holding so long as delays in receiving legal materials or legal assistance are the product of prison regulations reasonably related to legitimate penalogical interests, there is no constitutional violation”<sup>34</sup>

Collectively, the parentheticals provide a more complete understanding of the *Lewis* decision than would be obtained by reading the two private sector summaries alone. The corpus of parentheticals addresses topics completely omitted from the private sector summaries (e.g., class action suits; the Court’s earlier decision in *Bounds*) and conveys unique aspects on topics that are discussed in the private sector summaries.

While curating cases with multiple parentheticals has these advantages, it also raises challenges. The more heavily cited decisions have been summarized in parenthetical format on dozens—even hundreds—of occasions.<sup>35</sup> Filtering and search functionality are required to allow researchers to narrow in on particular parenthetical summaries, including by date or jurisdiction of the source case and by present participle (for example, the researcher might narrow the list down to only Ninth Circuit summaries that begin with “holding”). The challenge of how to best filter a wealth of useful information is a good one to have.

As with any summary, it is important that researchers not over-rely on the case descriptions provided by parentheticals. Although judges and their clerks are a particularly trustworthy group of jurists, any attempt to encapsulate a complex decision in just a few words requires compromise and subjective judgment. Parentheticals can aid, but never replace, an attorney’s own analysis.

### *B. Comparing Explanatory Parentheticals with Commercial Headnotes*

Along with providing editor-generated case summaries, the two major commercial research platforms (LexisNexis and Westlaw) display a list of key points of law contained within a given judicial opinion. Unlike parentheticals, these “headnotes” are not by nature concise; many are multiple sentences.

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33. *Stankowski v. Farley*, 487 F. Supp. 2d 543, 557 (M.D. Pa. 2007) (quoting *Lewis*, 518 U.S. at 349).

34. *Watkins v. Kasper*, 560 F. Supp. 2d 691, 700 (N.D. Ind. 2008) (quoting *Lewis*, 518 U.S. at 343, 362).

35. For example, *Celotext Corp. v. Catrett*, 477 U.S. 317 (1986), has been the subject of hundreds of parentheticals.

LexisNexis and Westlaw assemble these key points differently, the former relying on a largely automated process that extracts verbatim text and the latter relying on human editors' articulation of each legal concept.<sup>36</sup> The advantage of LexisNexis's automated approach is that it is scalable without hiring a large team of editors. Westlaw's approach is more expensive, but it adds the value of human interpretation and articulation. Parentheticals are unique in having the benefit of both approaches. Because parentheticals are comprised of extracted verbatim text, they can be assembled in a highly scalable, inexpensive way. At the same time, parentheticals are a human's (i.e., a judge's) interpretation and articulation of the given judicial decision.

Casetext recently added "Key Passage" functionality to its platform, using an automated system that leverages quotations in subsequent decisions.<sup>37</sup> Accessing any prominent decision on Casetext enables examination of the overlapping but distinct functionality of parentheticals and Key Passages.<sup>38</sup>

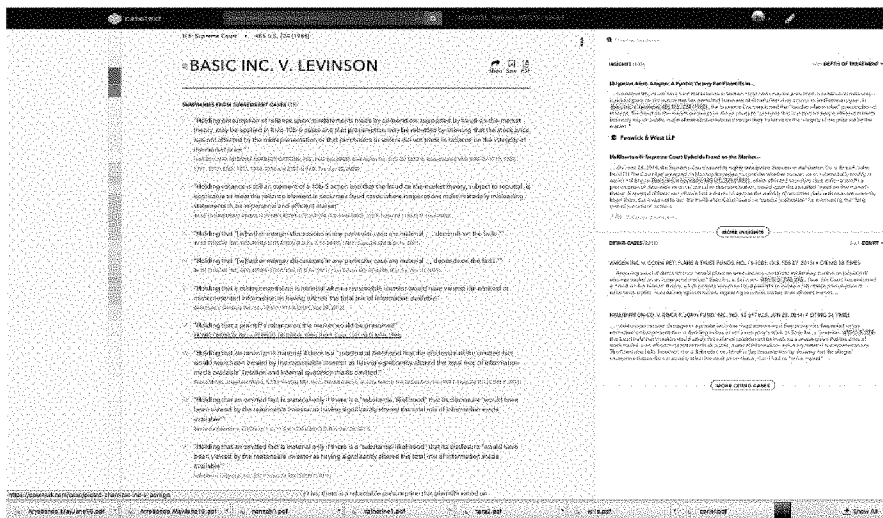
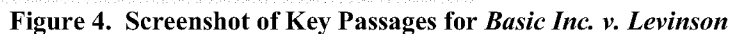


Figure 3. Explanatory parentheticals for *Basic Inc. v. Levinson*

36. For a thorough examination of headnotes, including their role in legal research, see generally Susan Nevelow Mart, *The Relevance of Results Generated by Human Indexing and Computer Algorithms: A Study of West's Headnotes and Key Numbers and LexisNexis's Headnotes and Topics*, 102 L. LIBR. J. 221 (2010).

37. See generally *Basic Inc. v. Levinson*, CASETEXT, <https://casetext.com/case/basic-incorporated-v-levinson> (last visited Feb. 27, 2018).

38. See, e.g., *id.*



Similarly, the Ninth Circuit in 1991 used an explanatory parenthetical to convey the interplay between its decision in *Trias-Hernandez v. I.N.S.*, 528 F.2d 366 (9th Cir. 1975) and the seminal *Miranda v. Arizona*, 384 U.S. 436 (1966), summarizing *Trias-Hernandez* as “declining to require *Miranda* warnings in deportation proceeding.”<sup>41</sup>

41. *Flores by Galvez-Maldonado v. Meese*, 942 F.2d 1352, 1374 (9th Cir. 1991).

Like all parentheticals, this subset of treatment-summarizing parentheticals has a source (the case where it appears) and a subject (the case it summarizes). But treatment-summarizing parentheticals are unique in that they address the relationship between the subject case and a third case. Treatment-summarizing parentheticals are thus informative of three, not two, cases and are essentially ready-made citator entries.

Indeed, treatment-summarizing parentheticals are often far more informative than the citator entries offered by for-fee platforms. Westlaw citator entry for the relationship between the Fifth Circuit decision in *United States v. Campbell*<sup>42</sup> and the Supreme Court's *Terry v. Ohio*<sup>43</sup> decision states only that *Terry* is "[d]iscussed by" *Campbell*.<sup>44</sup> Compare that to a parenthetical where the Fifth Circuit itself describes the relationship between *Campbell* and *Terry*:

*United States v. Campbell*, 178 F.3d 345, 349 (5th Cir. 1999) (holding that an officer "had not ruled out the possibility that the large bulge was a weapon, and his removal of the pocket's contents was not beyond the scope of a permissible *Terry* frisk").<sup>45</sup>

The parenthetical provides a much more fulsome description. Of course, only a fraction of all case relationships have been summarized in explanatory parenthetical format; parentheticals can supplement, not replace, existing citators. Four examples of parentheticals that discuss the subsequent treatment of *Terry v. Ohio*, 392 U.S. 1 (1968) are as follows:

- "*United States v. Navarrete-Barron*, 192 F.3d 786, 790 (8th Cir. 1999) (applying *Terry* standard to a vehicle stop)."<sup>46</sup>
- "*United States v. Flip-pin*, 924 F.2d 163 (9th Cir. 1991) (upholding a *Terry* search where officers opened a heavy make-up bag)."<sup>47</sup>

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42. 178 F.3d 345 (5th Cir. 1999).

43. 392 U.S. 1 (1968).

44. THOMSON REUTERS WESTLAW, next.westlawnext.com/ (search in search bar for "392 U.S. 1"; then select "Citing References"; then select "Cases" under the "View:" heading; then narrow the search by selecting "Federal," "Court of Appeals," "Fifth Circuit Ct. App."; then search within the results for the keywords "U.S. v. Campbell").

45. *United States v. Majors*, 328 F.3d 791, 795 (5th Cir. 2003).

46. *United States v. Johnson*, 528 F.3d 575, 579 (8th Cir. 2008).

47. *United States v. Walker*, 615 F.3d 728, 733 (6th Cir. 2010).

- “*United States v. Brignoni-Ponce*, 422 U.S. 873, 881, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975) (extending *Terry* to situations other than a stop-and-frisk for weapons).”<sup>48</sup>
- “*Illinois v. Wardlow*, 528 U.S. 119, 124, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000) (finding the suspect’s flight upon seeing police officers while in a high-crime area justified *Terry* stop).”<sup>49</sup>

*D. Using Parentheticals on Search Results Page: Supplementing KWIC*

Another potential use for explanatory parentheticals is enhancing the search results page that appears after a query is entered. On current legal research platforms, a query results in a list of cases. Beneath each case is usually a short snippet of text extracted from the decision because it contains one or more of the keywords in the query. These snippets are dubbed Key Word in Context (KWIC) because they purport to show the researcher the context surrounding the appearance of the search query.

For example, a Westlaw search provides the following KWICs for two cases that appear in the search<sup>50</sup>:

**(1) *Sony Corp. of America v. Universal City Studios, Inc.*, 464 U.S. 417 (2007).** . . . Anyone who trespasses into **copyright** owner’s exclusive domain by using or authorizing use of the **copyrighted** work in one of the five ways set forth in the statute is an infringer of the **copyright**; conversely, anyone who is authorized by **copyright** owner to use the **copyrighted** work in a way specified in the statute or who makes a fair use of the work is not an infringer of the **copyright** with respect to such use. 17 U.S.C.A. § 501(a) . . .

. . . **Copyright** protection subsists in original works of authorship fixed in any tangible medium of expression, however, this protection has never accorded **copyright** owner complete control over all possible uses of his work; rather, **Copyright** Act grants **copyright** holder exclusive rights to use and to authorize the use of his work in five qualified ways, including reproduction of **copyrighted** work in copies. Lanham Trade-Mark Act, § 43(a), 15 U.S.C.A. § 1125(a); 17 U.S.C.A. § 101 et seq . . .

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48. *United States v. Lewis*, 608 F.3d 996, 1000 (7th Cir. 2010).

49. *United States v. Horton*, 611 F.3d 936, 940 (8th Cir. 2010).

50. THOMSON REUTERS WESTLAW, next.westlawnext.com/ (type “copyright” in search bar; then follow “Cases”; then click “More Detail”).



(2) *In re Napster, Inc. Copyright Litigation*, 462 F. Supp. 2d 1060 (2006) . . . In light of already pending **copyright** infringement litigation against Internet music-downloading service, company which had invested in downloading service should reasonably have believed that litigation against it was probable if it continued its involvement with the service, and therefore its duty to preserve related e-mails attached as of time when an officer or investor officer received a clear indication, in the form of a warning from the CEO of a **copyright** holder, that recording industry would be targeting service's investors . . . .

. . . The above-captioned actions arise from litigation involving alleged **copyright** infringement by Napster, Inc. and its customers . . . .

Despite their name, KWIC snippets rarely provide enough context for a researcher to understand what is happening in a case. Both Lexis Advance and Westlaw now supplement the KWIC snippets with editor-generated case summaries that are visible on the search results page.<sup>51</sup> Parentheticals can also fulfill this role, supplementing KWIC snippets so as to better enable the researcher to decide which decisions warrant further exploration.<sup>52</sup>

#### *E. Enhancing Search Rankings*

Explanatory parentheticals can also be used to bolster relevance rankings of case law search engines. The presence of a given keyword in a parenthetical summarizing a decision is a strong indication that the decision really does concern that keyword (as opposed to a passing reference). Imagine a tort case involving a plaintiff named Mr. Patent. A search for “patent” would likely return this case because the word “patent” appears many times in the case. But utilizing parentheticals might alter the calculus because the word “patent” would not appear in any of the concise summaries of the case holding. Conversely, a decision that only contains the word “patent” twice but has

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51. See *Lexis Nexis Case Law*, LEXISNEXIS, <https://www.lexisnexis.com/en-us/products/caselaw.page> (last visited Feb. 27, 2018); THOMSON REUTERS WESTLAW, <https://lawschool.westlaw.com/marketing/display/RE/37> (last visited Feb. 27, 2018).

52. As of the writing of this Paper, Lexis Advance provides an “Overview” written by editorial staff, above the KWIC snippets. See, for example, LEXIS ADVANCE, <https://advance.lexis.com/> (type “Affordable Care Act” in search bar). Westlaw only provides such an overview if the “More Detail” view is selected. See, for example, THOMSON REUTERS WESTLAW, [next.westlawnext.com/](https://next.westlawnext.com/) (type “Affordable Care Act” in search bar; then follow “Cases”; then click “More Detail”).

several corresponding explanatory parentheticals that contain the word “patent” is highly likely to be an actual patent case.

Integrating parentheticals into search rankings can also help overcome problems caused by the use of synonyms in law. A search for “summary judgment” might miss a case that refers only to “Rule 56,” even though Rule 56 is directly related to summary judgment. If that case has been summarized in multiple parentheticals, however, it is likely that one of them will contain the words “summary judgment” since it is interchangeable with Rule 56.

## V. CONCLUSION

Explanatory parentheticals have been grossly underutilized despite being amenable to automated harvesting. This Paper set forth some of the ways in which parentheticals can be leveraged. Parentheticals can be used to create a searchable database of hundreds of thousands of case summaries. Parentheticals can be used to curate judicial opinions (or search result lists), providing the type of concise case overview that Westlaw and LexisNexis depend on an army of editors to generate. A substantial fraction of parentheticals can also be used to auto-generate citator entries because they summarize how a judicial opinion treats an earlier decision. Finally, parentheticals can be used to enhance search functionality by providing more information about a decision than is available in the full text of the decision alone. There is further work to be done to fully flesh out these parenthetical-based functionalities, and in all likelihood, other ways that parentheticals might be. It is the author’s hope that this Paper will entice others in the legal informatics field to consider how best to harness this valuable and ever-growing resource.

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